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THE RULE IN SOPHER'S CASE

BY

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The decision of the Privy Council in *Sopher's case*[1] is not easy to understand. It turned on the interpretation of section 113 of the Succession Act of 1925. The construction placed by Viscount Maugham, if literally taken, would have far-reaching results and would amount to a repeal in effect of some parts of section 114. In *Ardeshir* v. *Dadabhoy*[2], Blagden, J., remarked "the recent decision of the Privy Council (*Sopher's case*[1]) . . . must be held to have repealed the proposition of law there stated by the Legislature in section 114, illustration (c)." In *Framroze Dadabhoy* v. *Tehmina*[3], Stone, C.J., considered that *Sopher's case*[1] must be confined to settlements under a will and should not be applied to settlements *inter vivos*, inasmuch as such application if permitted would render a good portion of sections 14 and 15 of the Transfer of Property Act bad law. The learned Chief Justice went on to suggest that the principles governing gifts to unborn persons under a testament are quite different from the principles that govern gifts under a settlement *inter vivos*. The particular statement of Viscount Maugham that has led to these comments is as follows: "It is at least consistent with that decision (*Putli Bai* v. *Sorabji Naoroji*[4]) that if under a bequest in the circumstances mentioned in section 113, there is a possibility of the interest given to a beneficiary being defeated either by a contingency or by a clause of defeasance, the beneficiary under the later bequest does not receive the interest bequeathed in the same unfettered form as that in which the testator held it and that the bequest to him does not therefore comprise the whole of the remaining interest of the testator in the thing bequeathed." It may, in passing, be mentioned that in Bombay special legislation has been passed to minimise the hardships likely to be caused by a literal understanding of the rule in *Sopher's case*[1]. It is the purpose of this article to show that though the exposition of law by Viscount Maugham has somewhat confused the real position and has *prima facie* created several difficulties, the *ratio decidendi* can be understood in such a way as to avoid any repugnance between sections 113 and 114 or any distinction being made between a gift under settlement *inter vivos* and a gift under a will in favour of an unborn person.

Section 113 occurs in Chapter VII of Part VI of the Succession Act. The chapter covers sections 112 to 118 and relates to void bequests. Sections 13 and 14 of the Transfer of Property Act correspond to sections 113 and 114 of the Succession Act. The precursors of sections 113, 114, and 115 of the Succession Act of 1925 were sections 100, 101, and 102 of the Successions Act of 1865. The scope

1. (1944) 2 M.L.J. 20: L.R. 71 I.A. 93: I.L.R. (1945) Cal. 1 (P.C.).
2. A.I.R. 1945 Bom. 395.
3. (1948) 49 Bom.L.R. 882: A.I.R. 1948 Bom. 188.
4. (1923) 45 M.L.J. 780: 76 I.C. 996 (P.C.).

of section 100 (corresponding to section 113 of the present Succession Act) fell to be examined by the Privy Council in 1923, in *Putli Bai* v. *Sorabji Naoroji*[1]. That was a case of trust created under the will of a Parsi testator. The trusts constituted under clauses 11, 12, 13, 15 and 16 of the will in favour of certain beneficiaries were held by the Privy Council to be void as being repugnant to the principles of section 100. Under clause 11 the testator had directed that 10 years after his death, or on the death of his last surviving son, the trustees should divide certain properties into five equal shares for his five sons and to hold each share during the lifetime of each son on trust to pay him the income and on his death or if he had already died to hold the income for the persons presumptively entitled to the corpus till the death of the last survivor of the sons Under clause 12 he gave to each son a power to appoint among (*i*) the sons or lineal descendants of sons ; (*ii*) in their absence in favour of his widow and daughters or lineal descendants of daughters , (*iii*) in default of these two categories of persons, among the next of kin These were persons not in existence on the date of the death of the testator. By clause 13, in default of the exercise of the power, the share was to devolve on the sons' sons or issue *per stirpes* and failing them on widows and daughters or the issue of the latter. By clause 15 it was provided that if any beneficiary entitled to any share in income or corpus of the estate should (*i*) alienate or charge interest or (*ii*) become bankrupt or (*iii*) should have a decree passed against him for over Rs. 2,500 or (*iv*) should become indebted in any sum or sums exceeding Rs. 25,000, his interest should thereupon cease and become void and it was to be held and applied as directed under the will. By clause 16, if any beneficiary should cease to profess the Zoroastrian faith or become a convert or marry a person not born of Parsi parents, his interest should forthwith cease and become void as if he or she had died and the trustees shall hold such interest in trust for such persons or person as should be entitled to it on the death of such beneficiary, but subject to the provisions contained in clauses 15 and 16 On these dispositions Viscount Haldane observed "Their Lordships concur in the view expressed in the judgments of the Court of Appeal that these limitations contravene the provisions of section 100. The bequests to the sons, daughters, widows and issue of the testator's sons thus made do not in all possible instances dispose of the subject-matter to which they apply and so fail to comprise the whole of the remaining interest of the testator. It is obvious that he has reserved contingent rights which might well prove to be of value The unborn beneficiaries do not take the whole interest undisposed of by reason of the title of his own sons being only for their lives. But the difficulties are not exhausted by these considerations. Clause 15 gives over the share in income or corpus alike of any beneficiary who alienates, in any of a number of ways and in that event creates a discretionary trust, which may extend so far as the income is concerned, only to a part of it, for the benefit according to the selection by the trustees of some others of a class of beneficiaries somewhat wider than that of those who are to take under the clauses just referred to The 16th clause also puts an end to the title of every beneficiary who ceases to profess, or marries any one not professing the Zoroastrian faith and gives the interest over in favour of those who take on the death of such beneficiary. In the face of this clause it cannot be contended successfully that section 100 is complied with. For the whole of the remaining interest need not pass out of the hands of the trustees if there is a forfeiture of the income of the sons of the testator " Conditions of the above type attached to a bequest in favour of a person not in existence which is limited to take effect on the termination of a prior bequest are clearly affected by section 113 of the Act of 1925. The conditions either curtail the *duration* of the estate in the hands of the beneficiary being conditions of defeasance or affect their *powers* of enjoyment by giving rise to discretionary trusts in property. Such a bequest cannot necessarily exhaust the entirety of the interest which the testator had in the property and pass it to the beneficiary.

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1. (1923) 45 M.L.J. 780 : 76 I.C. 996 (P.C.).

Sopher's case[1] presents a problem of a different type. The summary of its facts as set out by Blagden, J., *Ardeshir* v *Dadabhoy*[2] may be conveniently adopted in view of the rather prolix and confusing language of the dispositions in that case. "A testator disposed of his residuary estate by will, in, briefly, the following manner by creating a trust As to income, an annuity was to be paid to his widow and the balance to his children, the share of each son being double that of each daughter, the children of any child predeceasing him or his widow without issue to accrue to the other children or grandchildren with the like discrimination As to corpus, his directions were to postpone division till his widow's death and thereupon to divide the property into shares as numerous as his surviving children and his predeceased children leaving issue living at his death and to designate each share by the name of one such child; that the share of a male child being always double that of a female to pay the income of each share to each child for life and thereafter to the children of such child subject to the like discrimination until they attain the age of 18 and thereafter in trust for such child or children absolutely subject to the like discrimination He then provided for the accrual of the share of any child who should die without issue as he had done in respect of income and made further provision for the case of children who should survive him but not his widow He further provided a fixed maintenance allowance for any child and a discretionary allowance out of that grandchild's share of income for any grandchild who should be entitled to receive a share of income or corpus during his or her minority" On these facts, Viscount Maugham, in the light afforded by the illustrations to section 113 of the Succession Act, referred to the law in the following way

"The first illustration to the section shows that a bequest by a testator to his children for their respective lives and after their deaths to their children for life respectively, unborn at the testator's death is void, for it is not a bequest of the whole interest that remains in the testator, *since it is not certain that there will be any grandchildren* (italics ours) A bequest to a son for life and after his death to his children who shall survive him must be bad for the same reason, since there may be no such children The second and third illustrations would seem to show—what is not very clear from the language of the section—that however complete may be the dispositions of the will, the gift after the prior bequest may not be a life-interest to an unborn person, for that would be a bequest to a person not in existence at the time of the testator's death of something less than the remaining interest of the testator How far this rule applies, it is not necessary to determine in the present case, but the two illustrations show the strict sense in which the Legislature has used the words 'a bequest, etc, is made subject to a prior bequest.' It may be that a particular bequest must comprise all the testator's remaining interest if the legatee under it is not in existence at the testator's death, and it is clear that in cases like those two illustrations, further gifts however complete in their operation, do not save 'the bequest' Partial intestacy under the will as a whole is not the point The question is whether the 'later bequest' (whatever that means in a particular case) is a complete disposition of the testator's interest."

There appears to be a suggestion both in the statement of Viscount Haldane in *Putli Bai's case*[3] and of Viscount Maugham in *Sopher's case*[1] that the test to be applied to decide whether a bequest is repugnant to section 13, is, whether there is a possibility of intestacy arising in respect of the subject-matter or any part thereof of the later bequest How far such a test is actually intended to be prescribed is dealt with later

After referring to *Putli Bai's case*,[3] Viscount Maugham summed up the actual position in *Sopher's case*[1] in the following terms: "It is at least consistent with that decision to hold (as was argued in that case) that if under a bequest in the circumstances mentioned in section 113, there is a possibility of the interest given to a

1 (1944) 2 M L J. 20 L.R. 71 I A 93: I.L.R. 1945 Cal. 1 (P.C).
2. A.I R. 1945 Bom. 395.
3 (1923) 45 M.L.J. 780: 76 I.C 996 (P.C).

beneficiary being defeated either by a contingency or by a clause of defeasance, the beneficiary does not receive the interest bequeathed in the same unfettered form as that in which the testator held it and that the bequest to him does not therefore comprise the whole of the remaining interest of the testator in the thing bequeathed ".

It falls to be noted that the contingency in *Puthi Bai's case*[1] was by way of a condition of *defeasance* and not by way of a condition making the *vesting* of the bequest dependent upon a contingency In the other the contingency related to the divestiture and not to the investiture of the bequest

Viscount Maugham after referring to section 1/3 went on to observe . " If we now turn to the clause in the will relating to the surplus income during the widow's lifetime their Lordships are of opinion that the interest of a grandchild in that income during the period until the death of the widow is contingent on his surviving his parent. The language shows clearly that no grandchild is to receive any income unless and until he survives his father ".

One may pause to comment that the ' later bequest ' to the unborn persons was subject to the contingency of the unborn grandchildren surviving their parents. The bequest was not made absolutely to take effect on the birth of the unborn legatee but on his satisfying the further condition of his surviving his parent. There was also the possibility of intestacy as to the surplus income if no child or grand-child survived the widow That is to say, even in the event of the grandchildren surviving their own parents they may not take and exhaust the subject-matter of the bequest unless they satisfy the further condition of surviving the widow In that sense the bequest in favour of the unborn granchildren is not one that necessarily exhausts the entire interest of the testator.

As regards the dispositions relating to the corpus, Viscount Maugham said : " It seems to their Lordships that ' the thing bequeathed ' in the circumstances of the case is the residuary estate of the testator, and none the less the clause .. relates only to the income of that fund until the death of the widow The three illustrations to section 113 above set out support the view that it is void. If this be correct, all the bequests or dispositions after the death of the widow would appear to be rendered void by the section ". For they do not exhaust the entire interest that remains to the testator in ' the thing bequeathed ' after the creation of an interest in favour of the widow. Apart from that, Viscount Maugham pointed out that the bequests as to the corpus were also subject to a contingency. Elaborating the matter, he said : " It was however also argued that the gifts to the grandchildren of shares in the corpus are contingent on their respectively attaining the age of 18 and also on their surviving their respective fathers. If correct, this would be a further ground for holding that section 113 applied ". It had been argued by counsel that the exception to section 120 would apply to the bequests to make them vested on the birth of the grandchildren and hence the bequests in their favour in the corpus cannot be said to be contingent Apropos of this contention, Viscount Maugham stated " It must be observed that the exception applies only to the case where a fund is given to any person ' on attaining a particular age ' It has no relation to any other contingency, *e g*, to his surviving a named person In that case the legacy bequeathed does not vest until the legatee survives the named person. The observation would seem to suggest a distinction between a condition as to the attainment of a particular age and " any other contingency ".

The implications of the various observations of Viscount Maugham may now be assessed. Three questions may require consideration (*i*) is the decision intended to preclude the creation of a bequest in favour of an unborn person, (*ii*) does it require that ' a later bequest ' limited in favour of an unborn person to take effect after a prior life estate in favour of another should be so created that

1. (1923) 45 M L J 780 : 76 I.C 996 (P C). I.L R. 1945 Cal. 1 (P.C)
2. (1944) 2 M.L.J. 20 : L.R. 71 I.A. 93 :

their Lordships' attention was apparently focussed entirely on sections 113 and 120, Succession Act and does not ever seem to have been called to illustration 3 to section 114. Apart from the complications caused by Mr Sopher's evident misogyny and from the discretionary trust for the advancement of the minors, any distinction which may exist between the case there put and the case before their Lordships appear to be a distinction without a difference Yet their Lordships held the bequests in the case before them bad, though those in the illustration just cited are expressly declared by the Legislature to be valid on the ground, apparently, that the quantum of an estate is diminished by the uncertainty as to who will ultimately get it I confess myself, no doubt entirely through my own mental incapacity, quite unable to follow this train of reasoning and trust I may be forgiven for echoing the dying request of (I think) Sir Isaac Newton for 'More Light' The following parable will serve to illustrate the difficulty which I feel Suppose that a gambling party is in progress and that Re 1 is the stake in a game of roulette Until 'giddy Fortune's furious fickle wheel' has come to a standstill no man can tell which of the gamblers will get that rupee ; indeed just as in the case of Mr Sopher's grandchildren it is not certain that any one of them will get it, for at any moment decoits or the police may raid the premises and seize it Yet, surely, the rupee at all times consists of 16 annas and no less However, while praying that for the future my darkness—in which I gather the profession is also groping—may be illumined, it is sufficient for the purposes of this case to say that as far as Rustomji's Trust Fund is concerned the decision of their Lordships confirms the conclusion at which I have arrived, indeed this case is all the clearer because of the power of revocation, which was naturally absent in Mr Sopher's will"

It may with respect be submitted that the reason given by Viscount Maugham for holding the "later bequest" to be void was not that "the quantum of the estate is diminished by uncertainty as to who will ultimately get it" but that it was subject to the condition of satisfying a contingency, namely, that the beneficiaries should survive a certain person. The beneficiaries might remain unascertained in *Sopher's case*[1] till that contingency happened, but that was not assigned as the reason for the decision The real reason was the existence of the contingency which prevented the vesting of the bequest and created a possibility of a reverter The facts of the case before Blagden, J, were different and the interests given to unborn beneficiaries were subject only to condition of defeasance and discretionary trusts and therefore were affected by section 13 of the Transfer of Property Act and were within the scope of the ruling in *Putlibai* v. *Sorabji*[2] But *Sopher's case*[1] involves a different aspect, namely, that the vesting of the bequest in an unborn legatee had been made conditional upon the legatee surviving a person It is also to be noted that while in the cases mentioned by his Lordship the contingency he spoke of may not alter the size of the interest, the condition of defeasance certainly curtails the duration of an estate and discretionary trusts the powers of enjoyment, thereby rendering the gift to the unborn beneficiary an estate lesser than what the donor had

Blagden, J, also expressed a doubt whether the recent decision of their Lordships of the Privy Council (*Sopher's case*)[1] must not be held to have repealed the proposition of law stated by the Legislature in section 114, illustration (3) The question is if *Sopher's case*[1] has really such an effect Sections 112 to 117 are a group of sections aimed at restricting the splitting up of property into fragmentary estates and limiting those fragmentary estates in favour of future generations. For, without such restrictions the property might be kept tied up in particular families and kept out of circulation The sections have to be interpreted in such a manner that as far as possible effect is given to all of them No section can be interpreted without reference to the others so as to arrive at a result that silences the intentions of the Legislature expressed in any other section, when in fact it is possible to interpret it in such a way that it would be reasonable and make all the sections effective.

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1 (1944) 2 M L J 20 L R. 71 I A 93: I L R. (1945) Cal. 1 (P C).

2. (1923) 45 M.L J. 780. 76 I.C. 996 (P.C.).

In regard to settlements *inter vivos* sections 13 to 18 of the Transfer of Property Act stand in a similar relation Section 112 mentions that a bequest to a person not in existence at the time of the death of the testator is permissible under certain circumstances, namely, if a prior interest in the thing bequeathed is created Section 113 refers to the *subject-matter* of the " later bequest " which is to take effect after the prior bequest and prescribes that it should not be less than the testator's remaining interest in the thing bequeathed Section 114 defines the utmost point of time till which the *vesting* of the bequest in favour of a person not in existence at the time of the death may be suspended According to that section when a bequest is given to an unborn person, the utmost point of time till which the vesting in him may be postponed is till his attainment of majority Therefore when a bequest is given to *A* for life and to *A's* son unborn at the time of the testator's death, at 18, the bequest is valid for, it *must* become vested in the unborn son within the period prescribed by law The son may be born even after the death of *A* but will attain at all events, if he attains at all 18 years within the period allowed by the law It is true that the bequest is none the less contingent, for, unless and until the legatee under the later bequest attains 18 it does not become vested But it is a *contingency personal to him* In *Sopher's case*[1] the contingency with which the vesting of the estate was linked up was the happening of an *event external to the beneficiary* He was to survive *another* person. He might come into existence, might attain 18 but yet would not get a vested interest till he satisfied the contingency of surviving another person Any condition precedent relating to the vesting of a bequest in favour of an unborn person other than a condition that he should attain a particular age not exceeding 18 years may possibly delay the vesting beyond the period of his minority A "later bequest" to an unborn person subject to such a contingency may therefore be repugnant to the provisions of section 114. If it is not affected by section 114 it may yet be affected by section 113 as not being a bequest extending to the entirety of the interest of the testator in the thing bequeathed A harmonious construction of the two sections will be to hold that a " later bequest " to an unborn person subject to the contingency that he should attain a particular age not exceeding 18 is *prima facie* valid It is only a contingency *external* to the beneficiary that would militate against the validity of the bequest under section 113 The reason lies in the policy underlying the enactment. *Sopher's case*[1] thus distinguished from the cases presented under the illustrations to section 114 does not cause any difficulty There is nothing in the judgment of Viscount Maugham that repels this distinction. In fact, his Lordship observed : " It was however also argued that the gifts to the grandchildren of shares in the corpus are contingent on their respectively attaining the age of 18 and also on their surviving their respective fathers If correct this would be a further ground for holding that section 113 applied " It is not the contingency of attaining 18 years that by itself mattered but the further condition that the legatee should survive his parent. This is an external condition which might possibly postpone the vesting beyond the permissible period. It is submitted that *Sopher's case*[1] should be confined strictly to cases of that type. The question whether there is any possibility of intestacy in respect of the " later bequest " should not be taken as the test to be applied to decide the validity or otherwise of the bequest. The recent decision of the Privy Council in *Aniruddha Mitra* v *Administrator-General of Bengal*[2], clearly excludes the tenability of such a construction of *Sopher's case*[1] In that case Sir Madhavan Nair observed with reference to illustration (i) to section 115, agreeing with the opinion expressed by the Judges of the High Court when the case was before them : " In their Lordships' view, the last sentence in the illustration means that the bequest is inoperative in regard to the children of *A* born after the testator's death, who do not attain the age of 25, within 18 years after *A's* death, but it is operative in regard to such children who do attain the age of 25 within 18 years though born after the testator's death "

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1. (1944) 2 M L.J. 20 L R. 71 I.A 93 : *I.* L R (1945) Cal. 1 (P.C.).
2. (1949) 2 M L J. 35 (P.C).

Far from holding that the bequest to the unborn legatee is void because it is contingent on attaining a particular age or because there is a possibility of intestacy in the event of all the legatees dying before the age of 25, Sir Madhavan Nair has given a wider scope of operation to the illustration than might appear on the face of it. Hence it may be concluded that *Sopher's case*[1] ought not to be interpreted as laying down a general rule that a "later bequest" to a person not in existence should not be contingent at all or that the intestacy test is the test that should be applied *Sopher's case*[1] only decides that a "later bequest" subject to contingencies external to the legatee are void

In *Framroze Dadhabhoy* v. *Tehmina*[2], the Bombay High Court considered the effect of *Soper's case*[1] in regard to a settlement *inter vivos* There a Parsi lady by name Tehmina had settled a fund "upon trust in favour of herself for life and after decease and subject to a power of appointment exercisable by will or codicil only, among her issue born during her lifetime, in trust for all her children who being sons shall attain the age of 18 or being daughters shall attain that age or marry under that age in equal shares." In default of issue there was a general power of appointment in regard to a part of the trust funds and subject to those trusts in trust for Dadhabhoy (her father) his heirs, executors and assigns. In view of the decision of the Privy Council in *Sopher's case*[1], Tehmina took out originating summons in the Bombay High Court for the construction of the trust deed, contending that the gifts in favour of the unborn issue and the other gifts over were void. It is obvious that if *Sopher's case*[1] is to be understood as holding that any "later" gift in favour of an unborn person, that is, subject to a contingency is void under section 13 the contention of Tehmina would be irresistible At the same time it is equally clear that such a gift is valid under section 14. Realising that *Sopher's case*[1] so construed would render a good portion of sections 14 and 15 bad law it was distinguished as inapplicable to cases of gifts and applicable only to cases of bequests. Stone, C J., held that the principles contained in the Indian Succession Act governing bequests to unborn persons were different from the rules contained in the Transfer of Property Act governing gifts *inter vivos* in favour of unborn persons and hence *Sopher's case*[1] did not affect the position The learned Chief Justice mentioned as points of distinction (*i*) "Far from creating one Code or one system with regard to dispositions in favour of the unborn generally, two different sets of restrictive regulations have been placed on the statute book (one set governing testamentary dispositions and another dispositions *inter vivos* which are always for consideration pecuniary or of natural love and affection) (ii) It is certainly strange that if in 1882 what was intended by the Legislature was to impose on the freedom of transfer of property *inter vivos*, the same restrictive regulations as had already applied for 17 years to testamentary dispositions, the Transfer of Property Act, 1882, did not either expressly so say or did not re-encact the existing sections of the Succession Act with slight amendments only which would have been necessary to fit the case of a transfer *inter vivos* (iii) Section 113 of the Indian Succession Act, 1925 (section 100 of the Act of 1865) corresponds section 13 of the Transfer of Property Act and not only is the word 'comprises' in the former Act replaced by the word 'extends' in the latter Act but to the latter section there is but a single simple illustration whereas section 113, Succession Act, has four illustrations of a wider and more complete character (iv) Further the important section 20 of the Transfer of Property Act finds no place either in the Succession Act of 1865 or in the Act of 1925". Later on the learned Chief Justice recognised that "there is no equivalent section in the Indian Succession Act, 1925, to section 20 of the Transfer of Property Act, 1882, though illustrations (ii) to (v) of section 112 of the Indian Succession Act indicate that that section may be intended to have a similar result" It is submitted that these reasons and distinctions pointed out by the learned Chief Justice savour of expedients that do not carry much force and are not really necessary to get over the ruling in *Sopher's case*[1] The latter case understood in the manner already indicated

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1 (1944) 1 M L J 20 L R 71 I A 93: I L.R (1945) Cal. 1 (P C.). 2 49 Bom.L R. 882 A.I.R. 1948 Bom. 188.

will not militate either against section 114 of the Succession Act receiving its full value or against the corresponding provision in the Transfer of Property Act. It is also to be noticed that the principles contained in the latter Act and in the Succession Act are not different in substance

En passant it may be stated that the Bombay Government had an enactment passed—the Disposition of Property (Bombay) Validation Act, 1947—to save trusts executed before the 1st January, 1945, and also testamentary dispositions of persons who died before that date, from the supposed effects of *Sopher's case*[1], providing that with reference to such dispositions section 13 of the Transfer of Property Act and section 113 of the Indian Succession Act shall be deemed to have been repealed But for the reasons already set out there appears to be no need for such legislation

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SUMMARY OF ENGLISH CASES

COLLINS *v.* HOWARD, (1949) 2 All E R 324 (C A)

Contract—Damages for breach—Agreement by plaintiff to contribute capital for formation of a company—Defendant repudiating contract—Plaintiff who had sold a block of shares to raise the money paying enhanced rates for re-purchasing the shares after repudiation of contract—Damages remote and not recoverable

The defendant was proposing to form a limited company for exploiting an invention. The plaintiff agreed to contribute as working capital £2,500 in 6 per cent preference shares and had to sell certain shares for raising the funds But the defendant repudiated the contract. The plaintiff then had to re-purchase the shares sold at a higher price owing to market fluctuation. In an action for damages he claimed the loss thus incurred,

Held, in the circumstances the damages claimed are too remote and cannot be recovered

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HILL *v* WILLIAM HILL (PARK LANE), LTD , (1949) 2 All E R 452 (H L)

Gaming Act (1845), *section* 18—*Scope—Action on a new agreement for consideration to pay a sum won on betting—Not maintainable*

Per Viscount Simon, Lord Greene, Lord Normand and Lord MacDermot (Viscount Jowitt, L C , Lord Oaksey and Lord Radcliffe, dissenting) —Section 18 of the Gaming Act (1845) is so framed as to defeat an action, though not entirely brought on the original wagering contract, if it was brought on an alleged new contract to pay a sum won on the wager.

Bulb v. *Yelverton*, 9 Eq 471 and *Hyams* v *Stuart King*, (1908) 2 K B 696, overruled.

Dicta in *Varney* v *Hickman*, 5 C B 280 (282) and *Diggle* v. *Higgs*, 2 Ex D 427, 429, disapproved.

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1 (1944) 1 M L J 20 : L.R 71 I A. 93 : I L.R. (1945) Cal. 1 (P.C)